

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

M4SIZ LIMITED,	§	
	§	
Plaintiff,	§	Case No. 6:22-cv-00733-ADA-DTG
v.	§	
	§	
NIKE, INC.	§	
	§	
Defendant.	§	

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE ALAN D ALBRIGHT,
UNITED STATES DISTRICT JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is Defendant Nike, Inc.'s Motion to Dismiss for Improper Venue (ECF No. 11). For the following reasons, the Court **RECOMMENDS** that Defendant's Motion be **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiff filed this lawsuit on July 6, 2022. ECF No. 1. On October 4, 2022, Defendant filed a Motion to Dismiss for Improper Venue. ECF No. 11. After taking venue discovery, Plaintiff's deadline to respond to the Motion to Dismiss was December 27, 2022. Plaintiffs did not file a response in opposition to the Motion to Dismiss. After the deadline, Plaintiff contacted Defendant and requested an extension of the deadline to December 30, 2022, to which Defendant agreed. ECF No. 20. To date, Plaintiff has not filed a response.

II. DISCUSSION

Local Rule CV-7 provides that “[i]f there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed.” Plaintiffs failed to file a response as required. Therefore, the Court will treat Defendant’s Motion to Dismiss as unopposed, and recommends that the Motion to Dismiss be granted.

III. RECOMMENDATION

For the above reasons, it is the **RECOMMENDATION** of the United States Magistrate Judge to the United States District Judge that Defendant’s Motion to Dismiss for Improper Venue (ECF No. 11) be **GRANTED**.

IV. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm’n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party’s failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415 (5th Cir. 1996) (en banc). Except upon grounds of plain error, failing to object shall further bar the party from appellate review of

unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

SIGNED this 6th day of January, 2023.

A handwritten signature in black ink, appearing to read "Derek T. Gilliland", written over a horizontal line.

DEREK T. GILLILAND
UNITED STATES MAGISTRATE JUDGE